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10/706,104

11/12/2003

Douglas Craig Scott

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27752 7590 09/10/2007

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EXAMINER

GEMBEH, SHIRLEY V

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

09/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/706,104

Applicant(s)

SCOTT ET AL.

Examiner

Shirley V. Gembeh

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-29,31,32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-29,31,32 and 34 is/are rejected.
- 7) ☒ Claim(s) 18,28,32 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The response filed **6/12/07** presents remarks and arguments to the office action mailed **12/27/07**. Applicant's request for reconsideration of the rejection of claims in the last office action has been considered.

Applicant's arguments have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Response to remarks**

The response filed October 03, 2006 presents remarks and arguments to the office action mailed May 05, 2006. Applicants' request for reconsideration of the rejection of claims in the last office action has been considered.

Applicants' arguments, filed 10/03/06, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### **Status of claims**

Claims 1-17, 30, 33 and 35 are cancelled and claims 18-21, 28-29, 32 and 34 have been amended.

Claims 18-29, 31-32 and 34 are pending in this office action.

### ***Claim Objections***

Claims 18,28, 32 and 34 are objected to because of the following informalities:  
The periods in the claims at the part designations "a.", "b.", "c." and "d." are improper.  
There should be only one period in a claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-29, 31-32 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The characteristics of the retentive agent in claim 19 for example does not describe the long list of retentive agents of claim 18 that will work effectively to express the characteristics exemplified in claim 19 for example.

The claimed invention is drawn to an oral care kit comprising 1-40% of retentive agent selected from water soluble hydrophilic gums, water soluble hydrophilic polymers

having the property of hydrating upon exposure to water, a flavor, sensate, forming agent, abrasive, buffer in a container. The claims do not indicate what distinguishing attributes are concisely shared by the members of the very broad genus comprising and which provide for the function claimed, of having an intact hydrated mass that is visible on 4-5 molar or premolar surfaces as required by instant claim 19 for example. The specification and claims do not describe elements which are essential to the genus comprising such agents. The specification fails to teach or adequately describe a representative number of species in this broad genus such that the common attributes or characteristics concisely identifying members of the genus are exemplified, and, because the claimed genus is so highly variant, the description provided is insufficient. One of skill in the art would reasonably conclude that the disclosure fails to provide a representative number of species to describe the genus claimed. Thus, Applicant was not in possession of the claimed genus.

***Claim Rejections - 35 USC § 103***

Claims 18-29, 31-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor US 6,706,256 B2 in view of La Rochelle, US 4,157,386 taken with Aberg et al., WO 88/10110.

Lawlor discloses karaya (retentive agent) as required by instant claims 18-21 in the amount of 0.1%- 15% (see col. 21 line 55), wherein the composition is non-cariogenic (see col. 20 line 43), a chewable solid unit at col. 15 line 46+ where it is referred to as hard and low boiled candy, wherein the composition is less than 65% at

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col. 15 lines 9-10, wherein the retentive agent is carboxymethyl cellulose (see col. 21 line 51) as required by instant claim 22-23, anticalculus agent fluoride ion as required by instant claim 24-25 (see col. 10 line 31 and col. 11 line 48), where the solid unit is a compressed tablet as required by instant claim 26, (see col. 26 line 62) comprising a flavor (see col. 23 line 20+), water soluble buffers as sodium bicarbonate (see col. 21 line 62) having a pH pH 3-10 at co. 22 lines 5) as required by instant claim 29.

La Rochelle teach a soft chewable lozenges that interact with saliva on chewing to coat the surface of a the teeth (see abstract), comprising a fluoride ion , a non-cariogenic, antioxidants (see col. 5, lines 30-47) wherein toothbrush is used after chewing the tablet/lozenges. Specifically La Rochelle teaches present invention become an adhesive mass due to the action of saliva on the dry starch adhesive and polishing agent. This mass sticks to the teeth during the chewing (see col. 2, lines 64-68).

Aberg et al., teach a non-effervescent tablet that forms a paste when chewed (page 5).

One of ordinary skill in the art would have been motivated to modify Aberg's tablet to that of Lawlor and combine the teachings to form a chewable tablet that when in contact with saliva form a deposit on the teeth as taught in the prior art and use a toothbrush for remove a substantial amount of the sticky agents and retain some on the teeth for the cleaning polishing of the tooth as taught by laRochelle. See col. 5, lines 20-22.

One of ordinary skill in the art would have been motivated in combining the prior art of above for the benefit of oral care hygiene and a reasonable expectation of success would have been expected because the prior art teaches the claimed invention at the time the invention was made.

No patentability weight is given to the instruction as claimed in claim 18. See *in re Ngai* 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004). (Personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate).

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley V. Gembah whose telephone number is 571-272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SVG  
8/30/07

Shirley V. Gembeh  
Patent Examiner, Art Unit 1614

Frederic Krass  
Primary Examiner

A handwritten signature in black ink, appearing to read 'Frederic Krass', written in a cursive style.